IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6359 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPALSINH TEMUBHA

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

Mr N.D.Gohil, Asstt.Govt.Pleader for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. The petitioner has approached this court to challenge the orders passed by the Mamlatdar and ALT in

Ceiling Remand Case No.3/90 on July 3, 1991,the order passed by the Deputy Collector on April 29, 1992 in ALC/Sec.35 case No. 5 of 1991 and the order passed by the Gujarat Revenue Tribunal (GRT) in TEN/BR/ 17 of 1992 dated April 23, 1993.

2. The facts leading to this petition can be briefly stated thus:

2.1 The petitioner along with other joint owners holds lands inherited by them and the lands in question were of Hindu Undivided Family. Petitioner's father expired on 8.1.1968. Later on, an entry came to be made on April 2, 1969 bearing No. 338 in village form No.6 wherein Hansaba Hemubha, Bapalba Hemubha, Gnanba Hemubha and Mayaba Hemubha waived their rights from survey Nos. 21,34 and 134 totally admeasuring 6 acres- 10 gunthas of land. However,that entry was not fully certified as Gnanba and Mayaba were found to be minors and therefore, waiver was accepted only in respect of Hansaba and Bapalba by deleting their names. According to the petitioner, family consisted of the petitioner himself, his wife,his minor sons, three unmarried daughters and two unmarried sisters on the day when the ULC Act came into force on 1.4.1976. In the ceiling remand case No.3 of 1990, the Mamlatdar and ALT considered the statements of the sisters and after referring to entry No.338, came to the conclusion that there is no substance in the version given by Hansaba, Bapalba, Gnanba and Mayaba of having not waived their rights. The Mamlatdar and ALT,therefore, came to the conclusion that the petitioner held survey Nos. 87 (Paiki), 94, 21, 34, 136 and 29 admeasuring in all 106 acres -10 gunthas. He, therefore, observed that there is no question of invoking provisions of section 6 (3) (b) of the ULC Act and passed the impugned order declaring 54 acres-10 gunthas of land as excess. The said order was challenged before the Deputy Collector who did not accept the version of the petitioner and dismissed the appeal confirming the order of the Mamlatdar and ALT.The said order was again challenged before the GRT which also dismissed the revision and confirmed the orders of the authorities below which has given rise to the present petition.

3. Mr.Raval, learned advocate for the petitioner has drawn attention of this court to the fact that the authorities below have not considered entry No.338 in its correct perspective..The authorities have proceeded on the premise that by virtue of entry No.338, Hansaba, Bapalba, Gnanba and Mayaba have waived their right in the property in favour of the petitioner; whereas, in fact,

if entry is seen, waiver was accepted only in respect of Hansaba and Bapalba.Mr.Raval submitted that if this factual aspect is considered, then, computation of excess land, if any, would change and therefore,the petition may be allowed and the matter may be remanded to the Mamlatdar and ALT for reconsidering/ reviewing his order in light of entry No.338 and provisions of law as applicable to the facts of the case.

4. Mr.N.D.Gohil,learned AGP has opposed this petition. He submitted that there is concurrent finding of the three authorities below and,therefore,this Court may not interfere.

5. Having regard to the rival side contentions, the petition deserves to be allowed on the grounds advanced by Mr.Raval. A bare reading of entry No.338 at annexure `A' makes it clear that it only relates to S. Nos. 21, 34 and 136.It is also equally clear that although Hansaba, Bapalba, Gnanba and Mayaba waived their rights, waiver of only Hansaba and Bapalba was accepted and waiver of Gnanba and Mayaba was not accepted as they were found to be minors.If the order of the Mamlatdar and ALT as confirmed by the Deputy Collector and the GRT is seen,it is observed that by virtue of entry No.338, all sisters of the petitioner have waived their rights and,therefore, their oral version before the Mamlatdar that they have not waived their rights cannot be accepted. Thus, for not believing the oral version of these sisters,reliance is placed on entry No.338.If entry No.338 is examined, it is in respect of only two sisters as they were found to be minors.Therefore,the finding of the Mamlatdar and ALT that they have waived their rights in respect of six survey Nos. totalling to 105 acres and 10 Gunthas is not correct.If that entry is considered in its proper perspective, computation of excess land,if any, would change. The findings of the authorities below are,therefore, passed on erroneous reading of facts. Petition,therefore, deserves to be accepted on that ground alone and the same is accepted.

6. Petition is allowed. Order passed by GRT dated 23.4.1993 confirming the orders passed by the Deputy Collector,dated 29.4.1992 and Mamlatdar and ALT dated 3.7.1991, is hereby quashed and set aside . The matter is remanded to the Mamlatdar and ALT ,Rajkot for deciding the question of excess land afresh , after giving hearing to the petitioner. It needs hardly be stated that the Mamlatdar will decide the matter in accordance with law, as expeditiously as possible preferably within six months without being influenced by this order Rule made

absolute.No costs. Direct service permitted.

(A.L.Dave,J.)

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